

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FRANK L. DILEONARDO, JR. as)	
trustee of the Frank L. DiLeonardo,)	
Jr. Trust, and TIMOTHY N. TATUM,)	
an individual,)	Case No. 07 C 6617
)	
Plaintiffs,)	Judge Charles R. Norgle
v.)	
)	Magistrate Judge Susan E. Cox
JOSEPH FLETCHER, an individual,)	
)	
Defendant.)	

PLAINTIFFS' PETITION FOR ATTORNEYS' FEES AND COSTS

NOW COMES Frank L. DiLeonardo, Jr., as trustee of the Frank L. DiLeonardo, Jr. Trust, and Timothy N. Tatum (the "Plaintiffs") by and through their attorneys, Schuyler Roche, P.C., and pursuant to the Settlement Agreement and Mutual Release (the "Settlement Agreement") entered into by the Plaintiffs and the Defendant, Joseph Fletcher ("Fletcher") and this Court's Order of June 4, 2008, hereby petitions this Court to award the Plaintiffs their attorneys' fees and costs incurred in connection with this matter. In support of this petition, the Plaintiffs state as follows:

A. PROCEDURAL HISTORY

1. On or about September 20, 2007, Fletcher executed a Promissory Note in connection with the Monterey Music Summit 2007. Under the terms of the Note, Fletcher promised to pay the Plaintiffs two hundred seventy thousand dollars (\$270,000.00) on October 25, 2007.
2. Fletcher failed to make payment on the Promissory Note.
3. On November 26, 2007, the Plaintiffs filed their Complaint against Fletcher.

4. On January 15, 2008, the Plaintiffs and Fletcher entered into a Settlement Agreement in relation to the above captioned matter. A true and accurate copy of the Settlement Agreement is attached hereto as Exhibit A.

5. Pursuant to the Settlement Agreement inter alia, Fletcher was to make five payments to the Plaintiffs totaling two hundred and eighty six thousand dollars (\$286,000.00).

6. Despite the fact that Fletcher failed to make his first two installment payments, on March 10, 2008, the Plaintiffs agreed to modify the Settlement Agreement as follows: (a) Fletcher's immediate payment of seventy thousand dollars (\$70,000.00) and (b) the following modification of the payment schedule: forty thousand dollars (\$40,000.00) on April 15, 2008, fifty thousand dollars (\$50,000.00) on May 15, 2008, fifty thousand dollars (\$50,000.00) on June 15, 2008, and seventy six thousand dollars (\$76,000.00) on July 15, 2008.

7. Fletcher failed to make payment on April 15, 2008; accordingly, he once again breached the Settlement Agreement.

8. In conjunction with signing the Settlement Agreement, Fletcher signed an Affidavit for Consent to Judgment (the "Consent to Judgment"). Attached hereto as Exhibit B is a true and accurate copy of the Consent to Judgment.

9. The Settlement Agreement provides at ¶ 5(c) that in the event Fletcher has failed to make payment as prescribed, the Plaintiffs shall have the right to file the Consent to Judgment in this Court and seek the entry of a judgment in the amount of three hundred thousand dollars (\$300,000.00) plus any additional pre-judgment interest accrued on that amount from the date of entry as well as costs and attorney's fees incurred in collecting the unpaid balance minus any payments made.

10. On June 4, 2008, this Court entered judgment in favor of the Plaintiffs in the amount of two hundred thirty thousand dollars (\$230,000.00) plus pre-judgment interest accrued, court costs and attorneys' fees incurred in collecting said unpaid balance. A true and accurate copy of the June 4, 2008, Order is attached hereto as Exhibit C.

11. Pursuant to local rule §54.3 of the United State District Court of the Northern District of Illinois, on June 19, 2008, counsel for Plaintiffs sent Defendant's counsel a billing summary of the invoices attached as Exhibit A to the Affidavit of Douglas A. Hanson. Counsel for the parties were unable to confer regarding the billing memo.

12. Accordingly, the Plaintiffs have filed the instant Petition, seeking an award of the attorneys' fees and costs incurred by the Plaintiffs in collecting said unpaid balance.

B. THE PLAINTIFFS' PETITION

13. A district court's award of attorneys' fees is a matter committed to its sound discretion and will not be disturbed absent an abuse of discretion. Raffel v. Medallion Kitchens of Minnesota, Inc., 139 F.3d 1142, 1147 (C.A. 7(Ill.), 1998).

14. As is set forth more fully in the Affidavit of attorney Douglas Hanson, the Plaintiffs' attorneys' fees and costs incurred in collecting the unpaid balance total eleven thousand one hundred ten dollars and twenty two cents (\$11,110.22). A true and correct copy of the Affidavit of attorney Douglas Hanson is attached hereto as Exhibits D.

15. The attorneys' fees are reasonable. First, Plaintiffs' counsel drafted a Complaint, two Motions to Enforce the Settlement Agreement and various default notices. Moreover, Plaintiffs' counsel drafted the Settlement Agreement and the Affidavit for Consent to Judgment.

WHEREFORE, Frank L. DiLeonardo, Jr., as trustee of the Frank L. DiLeonardo, Jr. Trust, and Timothy N. Tatum respectfully requests this Court to grant them attorneys' fees and

costs incurred in collecting the unpaid balance of the Settlement Agreement in the amount of eleven thousand one hundred ten dollars and twenty two cents (\$11,110.22) and any other further relief this Court deems appropriate and just.

FRANK L. DILEONARDO, as trustee of the Frank
L. DiLeonardo Jr. Trust and TIMOTHY N.
TATUM,

/s/ James J. McNamara

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CERTIFICATE OF SERVICE

I, as attorney of record in the foregoing matter, do hereby certify that on June 24, 2008, I electronically filed Plaintiff's Petition for Attorneys' Fees and Costs with the Clerk of the Court using the CM/ECF system which will send notification to the following:

Eric Glenn Patt epatt@rsplaw.com
Diane Helene Psarras dpsarras@rsplaw.com

By: /s/ James J. McNamara
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